

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

<b>Donald L. Bertelle</b>	:	
<b>-vs-</b>	:	
<b>Illinois Bell Telephone Company</b>	:	
	:	<b>00-0473</b>
<b>Complaint as to improper installation of</b>	:	
<b>residential telephone line and repeated</b>	:	
<b>refusal to repair same in Chicago, Illinois.</b>	:	

**ADMINISTRATIVE LAW JUDGE'S PROPOSED ORDER**

By the Commission:

On June 22, 2000, Donald Bertelle ("Complainant") filed a verified Complaint against Illinois Bell Telephone d/b/a Ameritech Illinois ("AI" or "Respondent"), wherein he requests the Commission enter an order directing Respondent to replace and repair a residential telephone line at the property located at 2025 W. Grand Ave., Chicago, Illinois. In support thereof, Mr. Bertelle alleges that he is a customer of the Respondent and that as a result of faulty installation, his telephone service is constantly interrupted. He maintains that the Respondent improperly installed wiring at the above location that has resulted in the faulty telephone service. Thus, he contends that only by requiring the Respondent to replace and to repair the wiring, can this problem be resolved.

Pursuant to notice given in accordance with law and the rules and regulations of the Commission, this matter came on for hearing, before a duly appointed Administrative Law Judge at the Commission's offices in Chicago, Illinois, on and commence and continued until for completion. Respondent filed a Motion to Dismiss. The Complainant did not respond to the Respondent's Motion to Dismiss. At the conclusion of the hearing on the matter was marked, "Heard and Taken."

**Complainant's Petition**

Mr. Bertelle asserts that his problems began when he moved into 2025 W. Grand Ave., Chicago, Illinois. He claims that within one month of his residency, his telephone developed line problems. He states that about 3 years later he developed problems again wherein he could not receive or dial calls from his residency. In 1998, Complainant testified that he made numerous calls to Ameritech because of the problems with his line. He asserts that Ameritech sent out a series of technicians who claimed that they could not gain access to the premises. This was in spite of roof access being available to the telephone line.

**Ameritech Illinois Motion to Dismiss**

In response to the Complaint, Respondent filed a Motion to Dismiss or in the alternative, Summary Judgment. Respondent alleges the dispute arises from the installation and repair of inside wiring, which is a deregulated service, wherein the Commission has no jurisdiction. AI states that the tariffs relied upon, by the Complainant, are not relevant and do not relate to deregulated inside wire service.

**Complainant's Position**

Complainant did not file any briefs or replies in support of his position. Mr. Bertelle did present evidence at the hearing concerning the location, condition and various complaints that he filed regarding the wiring. The Complainant maintains that Ameritech used improper wiring from the NID (Network Interface Device) to his home. The Complainant states that the wiring was improperly installed and directly resulted in the interruption of his service. Complainant introduced photographs of the premises that show a wire running from a garage located at the rear of the property, over a neighbor's roof, across a short parapet, unto the roof of Mr. Bertelle and then to the Complainant's premises. Mr. Bertelle's photographic evidence shows that the wiring lies directly on the tarred roofs and across the short wall separating the garages. The Complainant alleges that as a direct result of the type of wire and its placement, the service of the Complainant has been disturbed.

**Ameritech Illinois Position**

AI argues that the record shows that Mr. Bertelle's installation was proper and in accordance with Ameritech Illinois' tariff. AI maintains that the company responded in an appropriate and timely manner to the service complaints made. AI asserts that there is no evidentiary basis for relocating the NID on Mr. Bertelle's property, and such relocation would run counter to State and Federal regulation. AI declares that the Complainant is not entitled to the requested abatement.

AI claims that there is no evidence in the record that AI installed the wiring at issue. AI avers that based upon the testimony of AI witness Mr. McGuire, the "quad" wiring found at Mr. Bertelle's building was commonly used for both indoor and exterior installations in Chicago through 1995. AI maintains that a wiring of 25 to 70 feet, as found at Mr. Bertelle's building, is well within the maximum of 250 feet set forth in the AI standards for premises wiring.

AI claims that the installation comported with the provisions in the AI tariff address location of the NETPOP (Networking Point of Presence), which states that the NETPOP "will normally be located within 25 feet of the point at which the network cable enters the building." AI maintains that the installation at Mr. Bertelle's building did not violate this provision since no network cable enters the building, but instead, terminates at the NID at the rear of the structure.

AI avers that the provision relied upon by the Complainant governs a different situation. AI states that Paragraph 32.2(B) of Ameritech Illinois Tariff No. 20 addresses a situation where a structure, such as a large apartment building, requires more complex inside wiring, and it allows the NETPOP to be located inside the building. AI argues that it is actually Tariff No. 20 Part 2 section 2 paragraph 32. 2(C) that states the NETPOP "will normally be installed externally for one and two line customers in single customer residence and commercial buildings."

AI contends that it can only repair wiring and other facilities to which it has access. Respondent states that its technicians run tests if the problem is on AI's side of the NID. AI states that if the problem is on the customer's side of the NID, the customer should be present to provide access to the premises since a technician normally would not go on the roof of a customer's building without the customer being present.

AI asserts that the evidence shows that on at least 10 occasions, technicians were dispatched to the Complainant's premises. AI claims that on five of those occasions nobody was present to allow the technician on to the premises. AI avers that on two occasions the technician did obtain access and isolated a problem to customer equipment and, on the other occasion, made repairs to the Complainant's wiring. AI states that during the final dispatch, on June 19, 2000, the technician spliced new wire in the "quad" connecting to the NID at the rear of the Complainant's building. Respondent argues that customer's cooperation is necessary for its technicians to gain access to make repairs to a customer's facilities.

### **Commission Analysis and Conclusion**

The Commission notes that the Respondent sets out, as its basis for the Motion to Dismiss, the Commission's lack of jurisdiction since the dispute involves inside wiring, which is a deregulated service. The Complainant contends that it is the placement and the type of wiring used that is the causation of the problem. We agree with the Complainant.

Our review of the record herein, shows that problems began for the Complainant a short time after he purchased the building. Although it is true that the wire in question is on the Complainant's side of the NID the evidence demonstrates that the wiring was damaged as a result of tar and heat. The photographs introduced by both parties showed that the wiring laid flat on a tarred roof surface and scaled a parapet onto another tarred surface where it eventually entered the premises of the Complainant. AI does not deny the causation of the damage to the wire, as asserted by the Complainant. AI asserts that the current location of the NID is proper because it is sufficiently close to the electrical pipes for the purposes of grounding.

While the present location of the NID is convenient for AI, it also appears to be the root cause of the Complainant's problem. It is hard to imagine any situation where the wiring would not deteriorate over a period of time when exposed to the elements, as demonstrated by the photographs. The melted tar and the heat damage to the wire

clearly exhibit the pitfalls of having the wiring laid flat on the roof surface. Combine those climatic conditions with rain, ice, snow and all the expansions and contractions caused thereby, premature failure of telephone service is inevitable.

We are further unconvinced by the Respondent's statement that the current location is the only proper site for the NID, to locate it anywhere else would prevent access to the NID without permission from the occupant. The Complainant's photographic evidence shows that NIDs have been located directly on the building of other customers. While this may not be the only solution in Mr. Bertelle's situation, it does demonstrate that AI has located NIDs in other places, wherein AI does not possess direct access.

Unless AI finds another location for its NID or finds another route to the Complainant from the NID without laying the wire on the roof, this problem will never be resolved. We are not satisfied that the Complainant has demonstrated the type of wiring used, is the cause of the problem. There is ample evidence, however, that the exposed wiring placed directly on the roofs and parapets of the garages, has led to its premature deterioration. To order Ameritech Illinois to merely replace the wiring with a more heavy duty cable, would not guarantee the prevention of an early demise to phone service. It is only logical that Ameritech either relocate the NID to some location that does not require the wire lay directly on the garage roofs or find another route for the wiring that does not require contact with the roofs.

The Commission agrees with the Complainant, as to Mr. Bertelle's request for the abatement of any monies owed during the time that he was without phone service. It seems incongruous to be required to pay for a service that one does not receive, especially where the aggrieved party is not at fault. In this instance, Mr. Bertelle's phone service was interrupted because Ameritech chose convenience over practicality. Although it is true the Complainant did not ask for an abatement in his original complaint, it is a logical conclusion and assumption that if he was correct, he was entitled to the abatement. The Respondent should not be surprised by such a request, and in fact, should have expected it.

Based upon consideration of the arguments advanced by the parties, the Commission is of the opinion and finds that Ameritech Illinois' Motion to Dismiss should be denied. Although the wiring in question is on the Complainant's side of the NID, the wiring used was the type and kind furnished by Ameritech prior to 1995 when there was only one carrier available. Secondly, the Commission finds that the reason for the interruption in service was caused directly by the wire's location as chosen by Ameritech Illinois. For these reasons, the Commission finds that the Motion to Dismiss filed by the Respondent is and should be denied.

## Administrative Law Judge's Proposed Order

The Commission, after reviewing the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) Illinois Bell Telephone d/b/a Ameritech Illinois is engaged in the business of furnishing telephone service to the public in the State of Illinois, and is a public utility as defined in the Public Utilities Act;
- (2) the Commission has jurisdiction of Respondent Illinois Bell Telephone d/b/a Ameritech Illinois;
- (3) the findings of fact and conclusions of law set forth in the prefatory portion of this Order conform to the evidence of record and the law and are hereby adopted as findings of fact and conclusions of law herein;
- (4) the Motion to Dismiss filed by Respondents should be denied;
- (5) the Complainant has demonstrated that his telephone service has been disturbed as a direct result of the actions of Illinois Bell Telephone d/b/a Ameritech Illinois;
- (6) the Complainant is entitled to an abatement from Illinois Bell Telephone d/b/a Ameritech Illinois from June 2000 to the present.

IT IS THEREFORE ORDERED that the Motion to Dismiss filed by Illinois Bell Telephone d/b/a Ameritech Illinois is hereby denied.

IT IS FURTHER ORDERED that Respondent Illinois Bell Telephone d/b/a Ameritech Illinois relocate the NID or reroute the telephone wiring at the above location in a manner that does not require the wire to be transported over the roofs of the garages.

IT IS FURTHER ORDERED that Illinois Bell Telephone d/b/a Ameritech Illinois grant an abatement to the Complainant from June 2000 to the present for any charges at the subject premises incurred while the Complainant was without telephone service.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code Part 200.800, this Order is final and is not subject to the Administrative Review Law.

DATED:  
BRIEFS ON EXCEPTIONS DUE:  
REPLIES ON EXCEPTIONS DUE:

August 29, 2002  
September 5, 2002  
September 12, 2002

Sherwin Zaban  
Administrative Law Judge